



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## Decision

**Matter of:** Sabre Communications Corporation--  
Reconsideration

**File:** B-233439.2

**Date:** June 30, 1989

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### DIGEST

Request for reconsideration is denied where the protester fails to show any error of fact or law that would warrant reversal or modification of prior decision, but reiterates arguments considered in the initial decision and, otherwise, untimely seeks to expand prior allegation to include challenge that solicitation amendment issued prior to the closing date for submission of offers rendered the solicitation unduly restrictive of competition.

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### DECISION

Sabre Communications Corporation requests reconsideration of our decision in Sabre Communications Corp., B-233439, Mar. 2, 1989, 68 Comp. Gen. \_\_\_, 89-1 CPD ¶ 224, in which we denied its protest of the Navy's rejection of its proposal as technically unacceptable.

We deny the request for reconsideration.

The request for proposals (RFP) called for the provision and erection of an 80-foot tower, a 60-foot tower, and five 40-foot towers to support the antennae that were to be mounted in the center of the top of each tower. Under the RFP award was to be made based on the lowest priced conforming proposal.

Sabre's proposal (with which it included its descriptive literature, in response to the RFP's requirements for information demonstrating the technical sufficiency of the proposal) was rejected as technically unacceptable on the basis that it failed to demonstrate conformance with the RFP requirement that the antennae be mounted at the top center of the towers. Rather, Sabre's proposal indicated that the towers would be constructed in a manner that was inconsistent with that requirement. Further, Sabre's

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proposal did not comply with the specified tower dimensions or with the load capacity requirement for the 80-foot tower. We held that the Navy's rejection of Sabre's lower priced proposal as technically unacceptable and its award of the contract to the offeror that submitted the lowest priced technically acceptable proposal was not unreasonable.

In its request for reconsideration Sabre maintains that, contrary to our decision, the RFP did not specify "how" the antennae were to be mounted.<sup>1/</sup> However, the RFP, as issued, provided in the statement of work:

"The Tower Work Platform will provide a full 360 degree access to the antenna mount at the top of the towers. . . ." (Emphasis added.)

Sabre's contention that the RFP is not clear is apparently based upon the following agency response to a question that was incorporated in amendment 0001 to the RFP:

Question: Are [the antennae] to be mounted vertically or horizontally?

Answer: The mounting of the antennae is not relative to the tower.

While the meaning of the agency answer is not entirely clear, amendment 0001 also states on the same page, ". . . [T]he antennae [are] to be mounted on the top of the towers in the middle of the tower." That is, the amendment answer only addressed how (vertically or horizontally), not where, the antennae were to be mounted and did not pertain to the problem with Sabre's proposal--that it indicated the antennae would be mounted on the side(s) of the towers, not "at" the top or "on" the top.

As we stated in the prior decision, the descriptive literature which Sabre submitted with its proposal to demonstrate its compliance with the RFP--in conjunction with its proposal cover letter statement, "We . . . emphasize that we are proposing . . . our Model SS3T tower," shown in the descriptive literature with side mounted antennae--indicated nonconformance with the requirement that the

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<sup>1/</sup> In its protest Sabre contended that, contrary to the agency's statement that its proposal specified that Sabre would mount the antennae on the side of the towers, not "at the top" of the towers as required in the statement of work, its proposal did state it would mount the antennae "at the top" of the towers.

antennae be mounted on or at the top of the tower(s). Moreover, the proposal contained no information concerning how Sabre would modify its model SS3T as shown to conform with the specifications. Therefore, the Sabre's proposal was reasonably interpreted as taking exception to the specifications.

Sabre also complains that the agency report did not state how each offeror depicted its proposed mounting of the antennae. The protester first raised this issue in its request for reconsideration, not within 10 days of the time it first learned of the basis of its complaint (that is, upon its receipt of the agency report), as required by our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1988). It is, therefore, untimely.

Sabre further complains that our March 2 decision did not address the fact that Sabre made telephone calls to the agency, allegedly to answer any questions the contracting officials might have concerning its offer. We did consider this allegation. As we stated in the prior decision, the solicitation advised offerors of the possibility that award would be made without discussions, based on initial offers to the lowest priced technically acceptable offeror, and if the agency had requested information from Sabre to determine the technical acceptability of its offer--that is, conducted discussions with the protester--it would have had to conduct discussions with all offerors in the competitive range and afford them the opportunity to submit best and final offers. See Astro-Med, Inc., B-232000, Nov. 21, 1988, 88-2 CPD ¶ 500. Therefore, that Sabre presented evidence to show it telephoned the agency is irrelevant, even if the purpose of those calls was to offer any necessary explanation(s) of its proposal, since under the circumstances here, the agency reasonably could--as it did--make award on initial proposals without conducting discussions.

In this connection, Sabre also alleges our decision did not address why, after technical evaluations had been conducted, contracting officials contacted one of the offerors whose proposal it had determined to be unacceptable. We noted this contact in footnote 4 of our prior decision. However, since the award was made without discussions with the awardee, this fact is irrelevant to our determination that the agency's rejection of Sabre's proposal was proper.

Sabre further maintains that our decision incorrectly states that it presented no evidence to support its suggestion that the Navy may have improperly conferred with the awardee prior to the closing date for receipt of proposals, because the agency amended the tower dimensions to be consistent

with those of the product manufactured by the awardee. Sabre contends that it provided evidence that the agency improperly conferred with the offeror when it observed in its comments on the agency report that the revisions to the tower dimensions were consistent with the dimensions of the towers offered by the awardee. In this connection, Sabre also argues that the prior decision did not address whether that amendment unnecessarily restricted competition.

Whatever the reason for the change to the tower dimensions, that the agency amended those requirements does not support Sabre's objection that the agency improperly or unfairly conferred with the awardee. It is not improper per se for a contracting agency to write product specifications based on the features of a potential offeror's product, provided that those specifications are not unduly restrictive of competition, but are reasonably related to the government's minimum needs. See Target Financial Corp., B-228131, Nov. 23, 1987, 87-2 CPD ¶ 506. Here, none of the offerors, including Sabre in its initial protest nor in its response to the agency report, timely protested to our Office that the agency's amendment of the tower dimensions rendered the solicitation overly restrictive. See CNC Co., B-232031, Aug. 21, 1988, 88-2 CPD ¶ 147. Further, Sabre's suggestion in its request for reconsideration that the amendment restricted competition does not overcome the fact that in respects other than tower dimensions, its proposal was technically unacceptable.

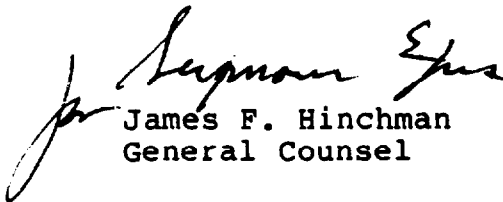
Finally, Sabre challenges our decision on the basis that the "original bidding documents and specification" it received from the agency did not include Clause L-15 of the solicitation. That clause essentially required that technical proposals comprehensively state and demonstrate how the offeror would accomplish the contract objectives to facilitate the technical evaluators' determination as to whether the offer would satisfy the RFP requirements. As evidence that the agency did not provide it a full copy of the solicitation, the protester submitted to our Office a copy of the solicitation which did not include Clause L-15.

The copy of Sabre's proposal which was provided with the agency report, however, contains sections of the RFP that were not contained in the copy of the Sabre proposal which the protester provided to our Office. For example, it includes Section K (Representations, Certifications and Other Statements of Offeror) and Section L (Instructions, Conditions, and Notices to Bidders). Although Section L

contains nothing that would require the offeror's acknowledgment of receipt (such as blank spaces for information to be entered or checked off), Section K of the copy of Sabre's proposal that was included in the agency report does bear indications that the offeror responded to the information it requested.

These circumstances would seem to indicate, at the very least, that the protester did not provide our Office with a complete copy of the solicitation as it was received from the agency. Further, each page of the solicitation is numbered and also references the total number of pages included in the RFP (for example, "Page 21 of 31"). Thus, if Sabre was not provided all the pages or sections of the solicitation, it knew or should have known its copy of the solicitation was not complete. It, therefore, should have requested of the agency a full copy, failing receipt of which it could have protested the agency's failure to provide it a full copy of the solicitation. Moreover, since Sabre provided, as a part of its proposal, information called for by Section L-15 of the RFP (although that information did not show compliance with the solicitation), the protester cannot now be heard to allege that its proposal was found unacceptable because the agency did not provide to it that portion of the RFP.

Since Sabre has presented no factual or legal basis to warrant reversal or modification of the prior decision, the request for reconsideration is denied. 4 C.F.R. § 21.2(a).

  
James F. Hinchman  
General Counsel